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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,656	12/15/2000	An Shun Huang	NBI-858	1573

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

6
DATE MAILED: 01/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/738,656

Applicant(s)
Huang et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec. 15, 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 20) ☐ Other:

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1. Claims 6,13,15,19,20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the phrase “ other flavors associated with freshness” is indefinite because the scope of the claim can not be determined from such language. What would be considered as “ flavors associated with freshness”? Also, the term “ caramel-like” is indefinite because it is not known what is encompassed by such term. What would be considered as “ caramel-like”?

Claim 13 has the same problem as claim 6.

Claim 15 has the same problem as claim 6.

Claim 19 has the same problem as claim 6.

In claim 20: Line 1, what does applicant mean by “ wherein 16 the chips are chocolate chips”?

In claim 21: Lines 4-5, “ the base cake portion” does not have antecedent basis.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Haynes et al.

Haynes et al disclose a flavor system having high chocolate flavor impact. The system has a high level of cocoa solids, a high level of a mixture of pyrazines and high ratios of certain dimethyl pyrazines to trimethyl and tetramethyl pyrazines. This chocolate flavor system is useful

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in formulating chocolate chips to use in chewy cookies. The chocolate chips comprise a confectionary fat, a sugar or sugar alcohol, emulsifiers, optional ingredients and the chocolate flavor system. A formulation for the chocolate chips is disclosed in column 12. The chips contains ethyl vanillin in an amount of .1% and the chips are used in a cookie formulation .

The reference meets the limitation of claim 23. The chips are enhanced flavor chips.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-22 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes et al.

The teaching of Haynes et al is disclosed above. Haynes et al do not disclose a combination of small and larger chips in the cookies, the count per pound of the chip, the pH and the amount of the chips.

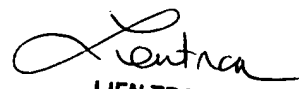
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It would have been obvious to one skilled in the art to use a combination of small and large chip depending on the texture and taste desired. It would have been an obvious matter of choice. It would also have been obvious to produce the chips in any size desired to obtain any count per pound; it would also have been an obvious matter of choice. The size of the chips, the amount of chips used, the use of small or large or combination of both and the use of larger amount of one size of chips over the other size all depend on the taste perception and flavor desired. This taste perception and flavor vary among individuals; therefore, it would have been obvious to vary the above parameters according to the taste and flavor desired. Since the chips disclosed in Haynes are chocolate chips, it is obvious the pH would be within the range as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

January 25, 2002


LIEN TRAN
PRIMARY EXAMINER
Group 1700